

Federal Acquisition Regulation

32.406

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

[48 FR 42328, Sept. 19, 1983, as amended at 72 FR 27384, May 15, 2007]

32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

- (1) Rent;
 - (2) Tuition;
 - (3) Insurance premiums;
 - (4) Expenses of investigations in foreign countries;
 - (5) Extension or connection of public utilities for Government buildings or installations;
 - (6) Subscriptions to publications;
 - (7) Purchases of supplies or services in foreign countries, if—
 - (i) The purchase price does not exceed \$15,000 (or equivalent amount of the applicable foreign currency); and
 - (ii) The advance payment is required by the laws or government regulations of the foreign country concerned;
 - (8) Enforcement of the customs or narcotics laws; or
 - (9) Other types of transactions excluded by agency procedures under statutory authority.
- (b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) above authorized under statutes relevant to their agencies.

[48 FR 42328, Sept. 19, 1983, as amended at 75 FR 53134, Aug. 30, 2010]

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in 50.101-1(a), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any

bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

- (1) Enter into the contract and provide for advance payments conforming to this part 32;
- (2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or
- (3) Deny award of the contract if the request for advance payments has been disapproved under 32.409-2 and funds adequate for performance are not otherwise available to the offeror.

[48 FR 42328, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 72 FR 63030, Nov. 7, 2007]

32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR part 205), and the implementing instructions in the Treasury Financial Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

- (1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least \$120,000 a year.
- (2) By direct Treasury check if the circumstances do not meet the criteria in subparagraph (1) above.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter of credit, the agency shall follow arrangements made under Treasury procedures for (1) consolidating funding to the same contractor under one letter of credit or (2) replacing multiple letters of credit with a single letter of credit.

(d) The letter of credit enables the contractor to withdraw Government funds in amounts needed to cover its own disbursements of cash for contract